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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

McRO, Inc., dba Planet Blue,  
Plaintiff,  
v.  
Insomniac Games, Inc.,  
Defendant.

**CASE NO. CV 12-10340 GW-FFM**

**Assigned to  
The Honorable George H. Wu**

**NOTICE RE: FIRST AMENDED  
COMPLAINT FOR PATENT  
INFRINGEMENT**

Pursuant to Fed. R. Civ. Proc. 15, on February 28, 2013, Plaintiff submitted its First Amended Complaint to the Court, which would render moot Defendant's 12(b)(6) Motion to Dismiss (Dkt. No. 20). A true and correct copy of the First Amended Complaint is attached hereto as Exhibit A.

25        However, the clerk at the filing window indicated that the First Amended  
26 Complaint was “received but not filed” because it is “untimely” due to Defendant’s  
27 pending Motion to Dismiss. A true and correct copy of the Notice of Document  
28 Discrepancies is attached hereto as Exhibit B.

1 Fed. R. Civ. Proc. 15(a)(1)(B) provides:

2 “a party may amend its pleading once as a matter of course within . . .

3 21 days after service of a responsive pleading or 21 days after service

4 of a motion under Rule 12(b) . . . , whichever is earlier.”

5 Further, Fed. R. Civ. Proc. 6(d) provides:

6 “[w]hen a party may or must act within a specified time after service

7 and service is made under Rule 5(b)(2)(C), (D), (E), or (F), 3 days are

8 added after the period would otherwise expire under Rule 6(a).”

9 Here, Defendant’s responsive pleading is its Motion to Dismiss under Rule  
10 12(b). The motion was electronically filed and served under Rule 5(b)(E) on  
11 February 4, 2013. Thus, under Rules 15(a)(1)(B) and 6(d), Plaintiff may amend its  
12 complaint once as a matter of course as long as it is filed on or before February 28,  
13 2013—*i.e.*, 21 days after February 4, 2013, plus 3 days.

14 In light of the foregoing, Plaintiff respectfully requests the Court to accept  
15 its First Amended Complaint as filed as of February 28, 2013.

16 DATED: March 1, 2013

17 Respectfully submitted,

18 RUSS, AUGUST & KABAT  
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Irene Y. Lee

19 By: /s/ Irene Y. Lee  
20 Irene Y. Lee

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